

**MINUTES
EAGAR BOARD OF ADJUSTMENTS
SPECIAL SESSION
22 W. 2nd St., Eagar, AZ
August 22, 2012 - 7:00 P.M.**

Chairman Winslow McNeill called the special meeting of the Eagar Board of Adjustments to order and welcomed those present. Chairman McNeill said to let the record show that all board members are present.

BOARD MEMBER PRESENT: Winslow McNeill, Chairman
John O. Phelps
Joe Sitarzewski
Melissa Webb
Wesley McBride

STAFF PRESENT: Shawn Nau, Town Manager
Bruce Ray, Community Development Director
Elecia Henderson, Code Enforcement
Eva Wilson, Town Clerk
Doug Brown, Town Counsel

ITEM #2: OPEN CALL TO THE PUBLIC

Chairman Winslow McNeill asked if anyone wanted to address the Board on a subject not listed on the agenda. There were none.

ITEM #3: NEW BUSINESS

A. DISCUSSION AND CONSIDERATION OF APPEAL OF ACTION APPLICATION TO REVERSE OR MODIFY THE ORDER, REQUIREMENT, DECISION OR DETERMINATION OF THE EAGAR COMMUNITY DEVELOPMENT DEPARTMENT'S DECISION REGARDING THE HOME BUSINESS AT 770 S. RIVER ROAD, JD'S BIRDS

Town Manager Shawn Nau started with giving introductory comments stating that this is the first meeting of the Board of Adjustments in anybody's recollection. The Board of Adjustments' provisions are included in the Town Code. The fundamental reason for the Board of Adjustments, as it applies to tonight's discussion, is for the citizens to appeal an interpretation of the Zoning Code. Therefore, not just one administrator is making the decision, but so that a group can determine the interpretation of a provision of the Zoning Code as appropriate. This is a policy that is created by State Statute and the Town Council, therefore, this meeting is subject to open meeting laws. This meeting has been posted as a public hearing and pursuant to open meeting laws. There are minutes being taken that will be posted on the website. The Board may also have questions of the Legal Counsel available or to ask for an Executive Session similar to Town Council meetings.

The issue tonight is a certain interpretation issue of a provision of the Town Code and there will be other materials that people would like to talk about in this context. This hearing is for the benefit of the applicants, asking the Board to reverse the specific provisions that have been interpreted by the Town and asking for the Board to challenge that interpretation. The Town has no benefit from this interpretation, only a need to follow the Town Code.

There is a different process that the Planning and Zoning Commission meets for the purpose of changing the Code and that is not why this meeting is taking place tonight. This is solely an interpretation of the existing Code and it is the Board of Adjustment's responsibility to follow the existing Code. If individuals wish to change the code, the correct forum is the Planning and Zoning Commission. Once the Board has made its decision tonight, the decision does not go to the Town Council; the applicants can only appeal the Board's decision in the Superior Court. It will be an important decision the Board will be making tonight.

Town Counsel Doug Brown added that the Board of Adjustments is being asked to affirm what the Town administration interpreted, deny the administration's decision, or modify the decision. There will not be a black and white, wrong or right, it could be determined that portions of the ruling are right and others not.

Board member John Phelps inquired if the Board has to follow the Code even if they don't agree with it. Shawn Nau affirmed that. Mr. Phelps followed with the question if the Board upholds the decision of administration tonight, and at a later date the Code is changed, if the applicants could appeal their case once the Code changed – there are portions of this Code he does not agree with.

Town Counsel Doug Brown stated that if the Code is changed and there is a violation, an appeal could be filed on that subject.

Mr. Phelps verified that the Code has to be upheld as it exists now, but if changed, if the applicants could continue doing what they are now. Counsel verified that is the case. Board member Wesley McBride reminded Mr. Phelps that the purpose of tonight's hearing is not to change Code – he invited Mr. Phelps to attend Planning and Zoning Commission meetings.

Mr. Brown stated that he has been the Town Counsel for over 20 years and this is the first time the Board of Adjustments has met showing that the Town is not aggressively enforcing the Code. There have only been a couple of zoning citations in that period that required court action.

Mr. Nau stated that this is not of any philosophy of one way or another from the standpoint of the Town and it is the responsibility of the Board tonight to determine what is a fair interpretation of the Code. Tonight's discussion is going to center on one word, the specific meaning of one specific word – what is a fair interpretation of that one word. All other discussion regarding changing the Code, or who likes or does not like the Code is irrelevant tonight.

Chairman McNeill asked that the Town representative, Mr. Ray give his testimony of the case before the Board.

Doug Brown added that as the Town will present it's position, the applicants will have the burden to show why this decision should be overcome – why they perceive this decision to be incorrect.

Community Development Director Bruce Ray reiterated Mr. Nau's statement; the two purposes of the hearing tonight are to deal with the definition and the Town Code Section 18.64.170 Home Occupations. Mr. Ray has interpreted and Ms. Landrin disagrees with the definition of "silviculture". In all dictionaries Mr. Ray has researched, silviculture deals with a branch of forestry and he interprets that as to plant a seed, grow a tree, nurture it, and cultivate it. As the applicant has not raised any trees on the property, their use is not silviculture. The Home Occupation Code is then scrutinized as to whether the applicant is operating a home occupation in an enclosed building maximum area equal to 50% in the dwelling, or an accessory building of 500 square feet, and cannot change the characteristics of the neighborhood; this is what has been interpreted for a Home Occupation from the Town Code by Mr. Ray.

Mr. Phelps wanted to know if there are similar situations in town that have come to the town's attention and how long has this Code been on the books?

Mr. Ray stated that the situation came to the town's attention by a complaint came from a neighbor. (The neighbor is not at the hearing.) Mr. Ray stated that the Code has not changed in the 17 years he has been employed with the Town of Eagar and that it was probably adopted in the 1980s.

When asked by Mr. Phelps how many times he has had to deal with this code violation, Mr. Ray stated that he has never had to deal with the definition of silviculture but has had to enforce things in this zoning district many times.

Mr. Phelps doesn't agree that silviculture is being used appropriately, but he would like to find a way to accommodate the home occupation, as they are not hurting anyone. Mr. Ray stated the only way is to have the Code changed in the future.

Mr. Nau presented some background information to help Mr. Phelps grasp the introduction of zoning codes. The fundamental reason there are zoning codes is to ensure that areas within the Town that have like characteristics remain in that fashion and that other newer uses don't come in and are determined to be incompatible. Mr. Nau gave an example of an incompatible use when a big box store opens in the middle of an agriculture area. Mr. Nau also gave an example of how a home occupation can be unnoticed because the only employee, the homeowner, is working at a computer and there is no other outwardly sign of a business being operated. The Town's Code allows some home businesses to be operated within residential and agricultural areas as long as they don't disturb the nature of that residential character; that it doesn't become an incompatible use. The line is drawn is when a home occupation becomes large enough to have external affects and this is when the Town Code is

enforced. This particular home occupation is externally noticeable with raw logs being processed into timber to be used to build chicken coops and other timber related products. The property also has noise and other attributes and the Code requires that all business conducted as a home occupation be enclosed within a building that does not use more than 500 square feet, preserving the character of the neighborhood. That is the reason why this hearing is taking place tonight. The provisions of the Code do not literally allow the kind of business that the Landrins are appealing tonight, unless it falls under one of the definitions of either residential or agriculture. In this case the word agriculture in the Code is defined as including the concept of silviculture. The Landrins are saying that they believe that the processing of the timber into wood products is silviculture. This hearing is happening tonight because of that definition. The Landrins will have the opportunity to give the Board their version of a definition for silviculture. Staff, today after looking at 26 different references for the definition of silviculture it was never defined as anything different than the growing of trees and forestry.

Mr. Phelps asked if this home occupation isn't in the best interest of the Town, he doesn't think it is silviculture either, but thinks it falls under a couple of people trying to make a living in their backyard.

Board member Wesley McBride replied, "if that is how Mr. Phelps feel than the Board needs to look at the Code as it applies to Home Occupations – that the home occupation needs to comply with those zoning codes." Mr. McBride asked Mr. Ray if the business complies with silviculture would the Landrins need to follow zoning codes for the home occupation codes as well. Mr. Ray stated that if his definition of silviculture were not correct then they would not have to comply with the home occupation code.

Chairman McNeill called on Marge Landrin to make her appeal. Ms. Landrin showed a PowerPoint Presentation. Ms. Landrin stated that her and her husband's, JD Roe, are the sole proprietors of the home occupation with the only employees being she and Mr. Roe. They have a business license and pay sales tax to the Town of Eagar and the State of Arizona. They report all of their income and business income tax.

The band mill shown in the presentation has been operated for an average of 25 minutes a day for the last two years according to the timer on the band mill. According to the band mill's manufacture specifications the band mill is quieter than Mr. Roe's chainsaw by decibel ratings. The band mill is portable and pulled by a pickup truck.

The home occupation provides a valuable service to the community as the business aids the Forest Service by cleaning up dead standing and dead down trees that the loggers don't want helping prevent catastrophic wildfires, alibi on a very small scale.

The Town has notified the business that they are labeled as an industrial manufacturing facility that can only operate on industrial zones that are located by the lamenting beam plant (West Highway 260) or by the sawmill.

Ms. Landrin's slides then showed the "industrial equipment" and operations that consist of the two employees, chain saws, a 16-foot trailer, a pickup truck and a winch. The home occupation produces poultry, eggs, and manufactures chicken coops, brooders, sheep sheds and dog houses, custom furniture, frames and they will cut lumber for other people, and sell firewood, plus give firewood to indigent citizens. The home occupation does not compete with the local lumber yards as most of the lumber cut is for the custom niche wood market only. They sell items through their website with customers as far away as Oregon and Maine – again most of the orders are customized lumber styles.

Ms. Landrin states that her property is zoned in an agriculture zone and that the second available use on that property and quoting Eagar Town Code Section 18.08.030 "Agriculture means the tilling of the soil, raising of crops, horticulture (plants), viticulture (grapes), silviculture (forestry), including not just silviculture; including all uses customarily incidental to." Ms. Landrin interprets that Code to mean that not only can you have trees growing on your property, that you can do everything else that is commonly associated with the trees. Which she feels is what they do, they take trees and make them into something useful and beautiful and they use all byproducts of the band mill including giving away scrapes, and sawdust. They use all customary uses associated with forestry but it can't rise to the level of "slaughterhouses, fertilizer yard or plants for the reduction of animal matter." "If the Town Code can log incidental uses to growing plants and grapes why did they put that in there?" That does not normally fit under the other definitions so they're telling you right there that the customary uses are acceptable just don't get so carried away that you put in a feedlot or slaughter house, etc." "Or anything that is similarly objectionable due to noise, odor, smoke, dust." The noise the band mill makes is less than a chain saw, so it can't be the noise. She stated the band mill does not produce smoke and that the dust is minimal as the band mill runs with water keeping the sawdust wet and falling very near to the mill. Fumes are minimal and will only be an issue if the band mill is placed in an enclosed building. Ms. Landrin stated that this is why she believes that silviculture is forestry.

Mr. Phelps wanted to know what the original complaint was against the home occupation. Ms. Landrin said she has not been told of the original complaint, but when the Town Administrators, Bruce Ray and Bill Greenwood, first approached her stating there was a problem they stated, "we want you to put a fence on the north side of your property only and part way on the front." She inquired as to why not on the south side of the property. Their reply was there was only a problem with the one side. Ms. Landrin then went to her complaining neighbor to ask if the building of a fence would satisfy their complaint, in which the complaining neighbor replied, "no, that's not acceptable; I hate your yard, I hate your house, I hate the berms, I don't like that you're nothing but a business and I don't want you there." Ms. Landrin went back to Mr. Greenwood and Bruce Ray and responded that she would be happy to put up a fence if they would in return give her a letter stating that she was in compliance. They replied that they could not do that because if the lady still doesn't like it, you're out. She then replied why should she spend money on a fence if it would not make her compliant and the business would be forced to leave anyway. Ms. Landrin is still not aware of what the original complaint was.

Board member Melissa Webb stated that her information states that it is the "use and appearance" of the property. Mr. Phelps inquired as to whether an official complaint was filed. Mr. Nau replied that an official complaint was filed. Mr. Phelps wanted to know if he could come to the Town of Eagar and say he hates his neighbor and doesn't want him around anymore, the Town would check him out? Mr. Ray responded if an official complaint is filed, yes. Mr. Phelps stated he could make his neighbor's life a living hell by filing complaints such as this? Mr. Nau clarified that when that occurs, it is Mr. Ray's responsibility to take a look at what specifically the complaint is about; if the complaint is that "I don't like my neighbor, I want him out of here." Mr. Ray is going to look at the Code and say there is no provision of the Code for disliking the neighbor – so no.

Mr. Brown stated that the complaint has to be in relation to a violation of the Code. Mr. Phelps was very concerned that any citizen could have a complaint filed on a neighbor and a neighbor found in violation.

Mr. Nau explained further the Town of Eagar's code enforcement practices. The Town of Eagar's code enforcement is complaint based because unlike large cities the Town doesn't have the resources to hire a huge staff to go around and make sure people are in compliance. When someone brings a specific complaint to the Town, it is the Town's responsibility to go visit the property and compare what they see to the Town Code. If the Code's provisions are being violated, then it is the Town's responsibility to follow through. The confusion of this case is that the stacked lumber is not noncompliant nor is the use of the band saw a non-compliant issue, the issue is whether this is a home occupation under the Code that complies with Code provisions.

Mr. Phelps stated that the home occupation was not a problem until the neighbor decided that she didn't like Ms. Landrin. The business was not hurting anyone until the complaint was filed. Mr. Nau stated that there are two avenues that code enforcement takes, the census based and complaint based. The census based is employed by cities like Phoenix and Scottsdale that have dozens of code enforcement employees that do nothing but go around looking for violations. A complaint-based system works by citizens filing a complaint, or an obvious health or safety violation is noted, it is then the staff's responsibility to enforce that Code provision. If the citizens do not like the Code provision, an individual can write the Town Council or the Planning and Zoning Commission asking for an amendment to that Code and it's the Planning and Zoning Commission's job to review the Code – not the Board of Adjustments.

Mr. Phelps stated that he understands, and he has a hard time with neighbors complaining against neighbors unless there is a major violation. Mr. Phelps stated that the original complainant is not here tonight and there is nothing stating what the original complaint was. Mr. Nau replied that it is a home occupation in non-compliance with the Code and the appearance of the property.

Mr. McNeill asked for further questions of Ms. Landrin. Ms. Landrin wanted to know what the status of complaints are now – is it now only on a complaint basis? A year prior to this the system was on an enforcement basis and that prior to this complaint Mr. Ray never had

any issues with the band mill when it was in operation. Mr. Nau stated that it would not matter if the complaint were census based or complaint based in this case because either way it is a Code violation issue. The bottom line from the Town's perspective is that there is only a half-time code enforcement employee and therefore impossible to have a census based system. Ms. Landrin stated that the Town did previously selectively enforce the Code. Mr. Nau stated that the complaint-based system is different than selective enforcement as selective enforcement is if the Code is enforced against some and not against others. The Town investigates each complaint; complaint based, as it comes in and that is what the Town does now, and can't speak for the past. Ms. Landrin acknowledged that this is a complaint-based system.

Board member McBride asked Ms. Landrin if she was opposed to building a structure to run the mill in. Ms. Landrin stated that it is impossible to run the mill in an enclosed 500 square foot building – the mill would still not be able to be in compliance with the Code.

Chairman McNeill asked for input from the public.

Dave Holaway is a resident of Eagar; he owns a vacation rental house approximately 100 yards down the street from Ms. Landrin. He is not aware of any complaints from his renters. Mr. Holaway stated that the Landrin property does not look as good now as it does in Ms. Landrin's PowerPoint Presentation and that there is a need for some work to be done to clean it up for the neighborhood. Mr. Holaway stated that he lives across town and that about five years ago a neighbor, started operating a band mill in the neighborhood on about an acre of property and started using it much the same way as the Landrin's are, he started cutting timber into lumber. Someone in the neighborhood complained to the Town, Mr. Ray came out, and within a week of the complaint, the band mill was stopped, and shortly thereafter Mr. Holaway saw the band mill was for sale. Mr. Holaway feels that the enforcement of the Code provision should be fair and should not be selective.

Mr. McBride asked Mr. Ray if the sawmill referred to by Mr. Holaway was zoned similar or if this was a precedence-setting event? Mr. Ray stated that the neighborhoods being compared Ms. Landrin's zoning and the referred sawmill owner's zoning is exactly the same, 1-acre parcels zoned AR-43.

Glenn Finch stated that he moved to the county because he knew what was coming. He stated that at one time everybody in the community had to make a living off of their land and that time may come again. We may all have to make a living off our land. Mr. Finch doesn't understand why the Town would harass someone for trying to make a living. He could have moved to the valley many years ago and made a lot of money but he didn't want to, he wanted to stay here. He knew it would be a lot harder to make a living up here, and it is. Mr. Finch doesn't understand why these people moving in want to change our lives, those neighbors who move here from the valley and want to make Eagar, AZ into another Scottsdale. It's not right. Mr. Finch gave an example of the Mayor's grandfather had lived on Central Avenue near the post office who had all sorts of animals on his property and made a living off of them. Don't try to change our way of life that is why we're here – don't try to change us. Mr. Finch stated that he is grateful that he is able to go to a local and buy lumber

for a good price instead of going to Woodland and buying lumber from Canada – this lumber is from here.

Gary Finch stated that he also owns a sawmill. He stated that he runs it on his place and he got tired of the way it looked and he's in the process of cleaning it up himself. He stated that the area from River Road and west is zoned AR-43 which is agricultural/residential. He owns ten acres of property on which he raises cows to supplement his income; his neighbors all the way around him raise cows, chickens, pigs, goats, sheep to supplement their income – they all make a living on it, it's all home-based living. Mr. Finch doesn't know how the Town qualifies the Code for people who's most of their acreage consists of corn, feed or alfalfa. If noise is an issue, Mr. Finch included with his neighbors, should be arrested and thrown in jail as often happens in agricultural zoning cows go into heat and make an awful noise.

Mr. McBride stated with livestock, the large animals and the noise and the smells that they make, is part of agriculture.

Gary Finch continued that noise is one of the complaints brought against Ms. Landrin. The definition of silviculture can be argued against all night and what the Code means. The fact is that lumber, the harvesting of the lumber, the milling of the lumber is regulated under the U.S. Department of Agriculture, what is it if it isn't agriculture, that's exactly what it is. If these folks need to clean their place up, he understands that being an issue. If it's offensive for people to drive by and it doesn't look good for the neighbors who try to keep their places looking nice, that is one thing. But to try to run them out of business, Mr. Finch believes that their home business is zoned to do the type of business they are performing. Gary Finch agrees with Glenn Finch that one day we're all going to be required to make a living off of our land if we can possibly do that. That these issues are going to become very critical when it comes to us surviving and helping each other, helping our neighbors survive.

Board member Joe Sitarzewski clarified that there are two issues: the home occupation and the definition of silviculture. Mr. Sitarzewski stated that he belongs to the *Society of American Foresters* and that he is a professional forester. Mr. Sitarzewski read the definition of silviculture as defined by the Society of American Foresters which is a professional organization recognized in the United States. "The art and science of controlling the establishment growth, composition, health, and quality of forests and humans to meet the diverse needs and values of landowners and society on a sustainable basis." Silviculture does not involve manufacturing; it only involves growth.

Mr. Nau stated that the Town has pulled as many definitions of silviculture as could be found. Mr. Nau stressed that most of the comments coming from the public don't mean that the Town likes the Code as it is. We're not saying that we are trying to run anyone out of business or make any decisions on that; as members of the Town staff it is our duty to follow direction as given to us by the Town Council even years ago when they adopted this Code. Mr. Nau asked that the public here tonight try not to personalize this situation upon the staff. The Town staff is trying to do the job hired to do, to enforce the Code. There are things, guaranteed, that members of the staff do not like about this Code, it's not their fault.

Mr. Sitarzewski wanted everyone to be aware that there are opinions and there is emotion and a lot of things involved with business and personal life. What really needs to be agreed upon is identifying what it is the Board is discussing. The Board is now assessing what has occurred and to determine if there is a problem with the way the Code was interpreted.

Mr. Nau agreed, and stated that the Planning and Zoning Commission will be taking public comments for changes to the Code over the next several months. If the Planning and Zoning Commission could hear the same testimony as is being heard tonight, then the Planning and Zoning Commission could propose those amendments for the Town Council to adopt, and then again it is staff's job to enforce whatever that Code is. But we are here tonight on a limited purpose of what is that definition of silviculture. Ms. Landrin brings up a very good point that the Code does have the provision that says specifically that it could include other customarily incidentals. Therefore, is the processing of raw timber into wood products something that is a customarily incidental thereto silviculture definition? The Town's interpretation is similar to Mr. Sitarzewski's definition in the growing of the trees; it was not the taking of those trees. If there is anything incidental in the growing of those trees the need to fertilize them, the need to shape them, the need to treat them with pesticides, whatever the need is, that would be from our interpretation the incidental thereto. Taking it to the next step of manufacturing wood products isn't the incidental of silviculture. From the Town's standpoint, we've been sworn to follow the Code and bring those things to the Board to try to interpret the Code fairly across the board. The Board can disagree with what the staff has interpreted from the Code, without offense.

Chairman McNeill stated with that being said, he asked that the continuing input focus on the Code itself and working specifically with the words agriculture and silviculture and really try to define those things.

Doyel Shamley stated that his opinion pertains to agriculture as he was born and raised in it and forestry is agriculture as stated by Gary Finch. Mr. Shamley gave an example: The orange producer that grows fruit or a producer that grows lettuce is defined as agriculture and so are the people that process it. The grain silos are considered agricultural producers; the people that do all the beans are agricultural producers. Agriculture has to seed to produce a crop into a marketable good. It has to have economic driving factors. There has to be a benefit derived from it. It is agriculture what the Landrins are doing and because of the provision in the Code, what the Landrins are doing is allowable; they're doing an incidental use to agriculture. There is no point to silviculture as a science unless the wood is going to be used in some way. There is no point to the management of the forest unless the wood is going to be used to some means. That is the purpose of the management and the art of silviculture. The only way for silviculture to be equitable is if it is manufactured and turned into something – all of that is agriculture. What the Landrins are doing does fit under the Code. The Landrins should not be punished. There is arbitrary enforcement, not in this case, but there is arbitrary enforcement around the Town Codes. He appreciates that the Planning and Zoning Commission is revamping the Code in an Open House effort. He hopes that the Open House format works and realizes that public participation is usually low.

As many of the public's comments tonight pertained to the changing of the Code, Mr. Nau gave a verbal advertisement of a Business Open House to be held on September 12th at 6:00 at the Eagar Town Hall. If anybody here has concerns about the Code and how it pertains to business or home occupations, this would be the forum to make suggestions.

Mr. Nau added, regarding Mr. Shamley's issue of the extent of agriculture being looked at from producing the product, there is a difference between growing oranges, harvesting them, and shipping them out which would be similar to harvesting trees and shipping them out versus taking those oranges and then producing an orange juice or byproducts. Is manufacturing orange juice and other things agriculture?

Mr. Brown stated we're limited to the way agriculture is defined in the Code, we can't quote our own definition, we have to go by what is defined in the Code.

Glenn Finch stated that the Town abides by the Code as if it were written by the finger of God. Mr. Brown stated that every Council member that is sworn into office swears that they will uphold the Town Code, so it is important in the vast scheme of things. Mr. Finch replied, even if it ruins someone's life. The reply is that the Code could be changed.

Chairman McNeill asked what the repercussions would be if tonight the Board enforces the Code exactly as it is, what would happen to the Landrins tomorrow?

Mr. Roe stated that they would come and arrest his wife and put her in jail for a misdemeanor if he sells one stick of wood off their property.

Mr. Nau stated that was an extreme statement.

Mr. Roe stated that is what they have been threatened with.

Mr. Nau stated that it would be a typical code enforcement matter, so it would be to cease operations.

Chairman McNeill asked if the violation would levy a fine.

Mr. Brown and Mr. Nau stated that the Landrins would be cited if they did not comply.

Chairman McNeill asked if there was a grace period for compliance?

Mr. Brown stated, "Yes". It has been heard in public meetings before that people are scared of Planning and Zoning in Eagar. Mr. Brown stated that the Town has bent over backwards for years on Code violations. The Town does not like to cite people or perform evictions on people. The Town has only received two convictions on people in over 20 years since he has been the Town Attorney. The Town has worked with people before they are cited, the Town has worked with people after they have been cited, they get them in court and ask them how they can come into compliance, the Town works with them consistently with only two convictions for zoning violations in over 20 years.

Chairman McNeill asked if the Board of Adjustments could set the grace period.

Mr. Nau stated that the Board couldn't set the grace period, and the Town would try to work with the Landrins in a period of time, meanwhile if the Planning and Zoning Commission is looking for a change, the Town could work with them to minimize the affects of the operation until the changes are being proposed or not. There are public hearings coming up, and at this time no one is recommending a change to this Code section, but there could be input to go in that direction at the next Planning and Zoning Commission meeting. The Board of Adjustments' role is really limited to the interpretation of this section.

Mr. McBride asked that if the Board moved to enforce the Code, could the Landrins in anyway operate under the home occupation zoning laws? Ms. Landrin replied, "No, the mill cannot be enclosed in a 500 square foot building." Mr. Roe added that the mill is an internal combustion engine and can't be run in an enclosed building.

Mr. Jim Finch, Jr. suggested that the Landrins plant trees around their place and in a "couple of hundred years for them to mature and then they can cut them and then harvest them." Mr. Finch, Jr. stated that this hearing is redundant. He doesn't believe that one complainant should have this much impact and that there should be more than one complainant, even the whole neighborhood, before such an impact is made to one's lives.

Mr. McBride stated that there was an additional complaint that the Board received via e-mail.

Ms. Landrin asked if the complaints could be reviewed? Mr. Nau stated that records are filed and available by public records request.

Mr. McBride stated that the additional complaint was noise.

Mr. Roe stated that complainant neighbor lives 435 feet from the corner of the Landrin/Roe property.

Mr. McBride stated that the conversation needs to move back to the definition of silviculture. Mr. McBride stated that he found the same definition as Mr. Sitarzewski and had a concern where at the end of the definition of silviculture states, "meeting the means and the diverse needs and values." He would like cleared up if the "meeting the diverse needs and values of the landowners and society," does that mean that the cutting of the wood is meeting the diverse needs and values of landowners and society?

Mr. Sitarzewski stated that silviculture is the "growing" of the forest. That once the forest is harvested, that is a different division of forestry, it is not growth anymore, and it is now utilization of a resource. At this point the Board cannot say we do not like the Code right now so we won't abide by it. There is a procedure in place to make changes to the Code, involving the whole community. Mr. Ray does not have the authority to change the Code; actually the Town Council doesn't have the authority unless the Code is changed.

Chairman McNeill stated that when he took the oath of office he was sworn to uphold the Constitution of the United States, the laws of the State of Arizona, and the Town Code. Mr. McNeill read the definition of agriculture according to Arizona Revised Statutes.

"Agriculture operations means all activity by the owner, lessee, agent, independent contractor, and supplier conducted on any facility for the production of crops, livestock, poultry, livestock products, or poultry products." In Mr. McNeill's opinion of that definition there are actually two places where the Landrin's operations fit strictly under the definition of agriculture. All activities for the production of crops or poultry products – the wood product is a crop.

Mr. Roe commented that they are manufacturing with a band mill, they are not producing a crop.

Chairman McNeill called on a raise of hands and he will designate them to speak.

Gary Finch stated that the "incidental" portion of the Code couldn't be defined. So until incidental can be defined, he doesn't think the Code can be used against the home occupation. He stated that the Code should be amended, and come up with a valid definition, and leave these people alone until that is done.

Mr. McBride stated that is why they are trying to define silviculture. The home occupation has to be an incidental use of silviculture. The local definition in the Town Code states that agriculture means the tilling of soil, the raising of crops, horticulture, viticulture, and silviculture and so the definition the Board is working on is silviculture.

Becky Crosby stated that whoever wrote the Code, what was the intent? She doesn't believe that the Code writers were allowing a forest to be grown on a property, as that doesn't make sense. What is the intent of using silviculture?

Nathan Strebe asked for a definition for incidental, to give an example. Mr. Nau stated that an incidental to silviculture would be if you had to store fertilizer or mulch or things that help in the growing of trees. At his last job there were silviculture businesses such as the growing of Christmas trees. Christmas trees were grown on agriculture-zoned property and they were harvested and they were shipped out and that was perfectly acceptable. How far should the "incidental thereto" in this case be taken; does it extend to something beyond that is necessary for the trees, does it extend to the manufacturing of goods with those trees. That is the question for the Board. Mr. Strebe stated that "incidental" isn't really defined and who is responsible for deciding what incidental is?

Mr. McBride stated that an incidental use only qualifies if the Board finds that the home occupation falls under silviculture. That is when incidental comes into play.

Elecia Henderson stated that there is only one zoning area that allows manufacturing and that is industrial, the general consensus here is that they are performing manufacturing, manufacturing is only allowed in industrial zones, it is not allowed in an agricultural/residential zone.

Ms. Landrin stated all their manufacturing of the chicken coops and furniture; etc fits within the home-based business statute as that is within an enclosed building and storing those products inside where they cannot be seen. The finished products are all done within the confines of what is required of a home-based business. Therefore, the manufacturing complies.

Mr. Nau agreed that is what they are doing that, but the piece that they are missing is the component that extends beyond the harvesting of the wood to the manufacturing in the cutting of the wood.

Ms. Landrin stated that then the cutting lumber into boards is not an incidental use. It does not have to be extended into making the chicken coops or furniture; that is a separate use. The Board only needs to determine incidental use as what takes place outside on the band mill, the taking of the log, putting it on the mill and slicing it, that is the incidental use in question – not the manufacturing as that is very small and is done in the garage.

Chairman McNeill stated that is a good point and could be the middle ground.

Mr. McBride inquired if the grace period mentioned is providing a grace period for the Landrins that would allow the Planning and Zoning Commission to look at the zoning code, to approach it and have them come be involved when the Commission talks about this section of the zoning code and to possibly modify that zoning code. Mr. McBride would be very open to moving in that direction because the Commission will be working with the Planning and Zoning Code and working with things that are arbitrary and need changed in the Code; he is okay with that.

Mr. McBride asked the Town Attorney what are the grace period and the process. Mr. Brown stated that the Board needs to be cautious. That the Board of Adjustments, nor the Town Council has the authority to tell the staff or prosecutor what to do with the case including time limits (or how to tell the prosecutor how to prosecute the case.) Would the direction be for the Landrins to cease manufacturing of the band saw until there is a time to consider the Code by the Planning and Zoning Commission meeting?

Mr. Nau stated there are a couple of alternatives. The Town could try to work with the Landrins – if this home-based business does not meet the definition of silviculture, the Town could work with them to minimize the external effects of their operations pending this meeting (which has been several months waiting for this Board to be assembled.) The shutting down of the band mill will not happen overnight and the Town will work with them with the external effects upon the neighborhood pending the Planning and Zoning discussions. However, there is absolutely no certainty that the Planning and Zoning Commission will approve a change in the Code or the definition of silviculture to favor the Landrin's home occupation.

Gary Finch felt that the Board should overlook the violation until a definite definition of the "incidentals" is found. He doesn't believe that the incidentals is tied to just silviculture, it is tied to the whole definition of agriculture too.

Mr. McBride asked the Town Attorney again if "incidental" is tied to the word silviculture as stated in the Town Code. Mr. Brown stated that, yes, in his opinion, and that in a court a judge would also agree with that clause.

Mr. Nau stated that the Board should not discuss other uses of agriculture, the subject tonight is the definition and interpretation of silviculture.

Chairman McNeill asked for opinions by the Board of Adjustments. Melissa Webb stated that when she looks at silviculture, the common methods of silviculture, she does not see cutting, using a band mill is a common method of silviculture. On the other hand, meeting the diverse needs and values, is the hard part that everyone is having a hard time with. The home occupation – it really doesn't fit there – there's not an enclosed building until the cutting is complete, the delivery of materials by vehicle is occurring, there is external evidence of the activity so the home occupation does not fit silviculture.

Ms. Landrin stated that the manufactured products does qualify under the Town's home-based business; the mill has to qualify under silviculture according to the Code and she is not arguing that because of the 500 square foot building and it is not feasible to ever enclose the mill. The mill is considered and classified as farm equipment. It does not have to be licensed when moved on a road.

Ms. Webb stated that the way the Code is written now, it cannot be accomplished. If the Planning and Zoning Commission is open to change the Code, of which several Board of Adjustments members are on the Planning and Zoning Commission, it could go from there.

Mr. McBride directed this question to Board member Joe Sitarzewski after checking on the Forest Service Management Website; the definition of silviculture is *"the art and science of controlling, establishing, growth, composition, health and quality of forests and woodlands; to meet the diverse needs and value of landowners and society on a sustainable basis."* Would the cutting and manufacturing of the wood meet the diverse needs of the landowners or society on a sustainable basis? Mr. Sitarzewski agreed that definition is the same as that of the Society of American Foresters and that the Forest Service deals with a natural resource, not anything that is done with the natural resource after it is harvested. So meeting the diverse needs, means providing a natural resource to do that, so no it doesn't meet that.

Mr. Phelps stated that there are different definitions and different interpretations and what all this boils down to is what is right and what is wrong. It's wrong to enforce this violation but it is a law right now so it has to be adhered to. But the right thing to do after this meeting or tomorrow is start working on the Commissioners and start getting the law changed so these people can build things and make a living on their own property. Mr. Phelps agrees that as a member of the Board of Adjustments that the Landrins are not abiding by the Code as it is written now. Mr. Phelps is still not satisfied with the definition and thinks the Landrins, contrary to legal opinion, should be able to continue operations until a definite definition is determined. He just sees these people trying to make a living and doesn't feel it is the Boards right to tell them they can't. He understands that is not why we are here tonight, but he wants everybody to know that he doesn't think the shutting down of a business is fair.

Mr. Nau stated that as staff we are pro-business and we really want to expand business and are very sympathetic to what is being discussed tonight and sympathetic well beyond to what is being discussed tonight because if any staff personnel were to be asked tonight, there would be three-dozen Codes they could recommend for change. There is a lot of work to be done to this Code. The challenge is fairly administering and treating people the same under the sections of the Code and interpreting them using the plain language the best we can. It is the Board's job to interpret as a second party after staff's first interpretation.

Mr. McBride stated that from a Planning and Zoning Commissioner perspective and running into concerns with this being manufacturing and that there is only manufacturing in Industrial Zones; will there be more roadblocks if manufacturing is allowed in agricultural zones.

Mr. Nau stated that the Planning and Zoning Commission could expand or extract the definitions, for example they could expand the size of a home-based building, or change the definition of silviculture to mean something else. Those are the types of decisions the Commission could make on behalf of the Town.

Mr. McBride's opinion is, after separation of emotion because this is a hard decision, after consideration of the Code, he is in agreement with what the Town has done, and he agrees and encourages everything else that has been discussed tonight.

Ms. Webb stated that the Code restricts the Board; there is no way around the Code.

Jim Finch, Jr. directed his statement at Mr. Nau and stated that he hasn't been in town very long and for him to make a statement that the Town is very friendly toward business, he thinks he needs to be here a while.

Mr. Nau stated that he is not talking about the past, that he hopes for a lot of change.

Mr. Finch, Jr. stated that as of today, the Codes are not business friendly and until a bunch of the Codes are changed, this Town is not going to grow.

Mr. Nau agreed. Mr. Nau invited Mr. Finch, Jr. to the September 12th meeting for businesses because he and the staff completely agree with that statement.

Mr. McBride agrees as a Commissioner that citizens need to attend these meetings for citizen opinions and so that the five Commissioners don't have to make all the decisions on behalf of the entire Town – we need citizen involvement. For the next 18 months the Commission will be working on this. Mr. Finch, Jr. stated that he did serve on the Planning and Zoning Commission for six years and the hardest thing was to change Code, there was no citizenry cooperation.

Ms. Landrin stated that her only violation is running the mill for commercial purposes. Running her out of business is not going to help the neighbor because the Landrins can still store logs, have firewood, cut lumber, and all of the above as long as she never sells anything or makes any money on the product. This is where Ms. Landrin feels that the Code is

awkward in that sense. She can continue her entire operation as long as it is not for commercial purposes. For a Code change suggestion "any activities that are allowed in a residential area, if they are the only people that are doing the work, no employees, activities that are being done normally, can also be done for a profit."

Mr. McBride stated that Ms. Landrin's statement earlier that two of the operations do fall under home occupation so the Town of Eagar Zoning Code is not ceasing the commercial endeavors in those two aspects.

Ms. Landrin stated that except they cannot do those operations without the lumber.

Mr. McBride stated that they could get wood from Woodland Building Supply.

Ms. Landrin and Mr. Roe stated that they cannot get the specialized lumber needed from Woodland and that they often sell Woodland their specialized lumber who in turns marks it up triple the cost.

Mr. Sitarzewski asked if there was a lot in the industrial zone where they could place their band mill to mill.

Mr. Roe stated, yes, that he was propositioned to lease property in the industrial zone for \$500 a month for a 20' x 20' piece of concrete.

Mr. Sitarzewski stated that the property is available, it is just cost prohibitive.

Plus Mr. Roe is concerned that the mill will disappear because it is so portable.

Gary Finch stated that it would also cost \$10,000 to place a fence around the mill to protect it.

Ms. Landrin added that the mill is used sporadically – only 25 minutes per day – it is not feasible for the small projects that come out of the mill. The mill may be used one day to make only one cut, locating it elsewhere will prove to be inconvenient.

Ms. Landrin stated that they will never be a large business, it is too cost prohibitive, and there is not enough demand for the niche market they are serving.

Ms. Strebe asked how long would it take to change a Code. Mr. McBride stated that first of all there is no guarantee that the Code will be changed. Ms. Strebe felt that the Landrins should be given a timeframe in which they could work around or plan to continue in the future.

Mr. Nau stated that the Planning and Zoning Commission will meet next month, the recommendation then goes to Town Council for two readings of the proposed ratification so it will be 60 –90 days – this is if there are no problems, objections, or amendments along the way.

Mr. Roe explained about the operation of the band mill. Mr. Roe has apply to the Forest Service by May of each year and maybe get some commercial pole permits to pull out hazard trees from campgrounds or along the highway. He provides this service. Mr. Roe has a very limited time to harvest those logs, and haul them to his property to store. He only has a short period of time during the year to get those logs into the yard because in the fall the rain is prohibitive. He has to have enough of a log supply to cut throughout the winter. This was one of the problems that the Town said they had too many logs in their yard. They may have 30 logs that nobody else wants such as Ponderosa Pine, all summer and all winter that they cut on this. The slabs left over are given to indigent people. And now the Town is telling him and his wife that they cannot try to survive in this economy because of the meaning of one rule, silviculture. He does not go out of his way to solicit to sell forest products, he is not advertising with big billboards; he has an ad on Craigslist to sell chicken coops and he sells them for one third of their real value. He added that any other manufacturer wants \$2,200 for chicken coops and he tries to sell them for \$500 wholesale or \$595 to a person. To purchase the lumber for that endeavor alone would be at least \$300. The only way he is able to sell these items in a down turned economy and make any money is because he is able to manufacture his own lumber. This is a plus as he is taking a product that nobody on this earth wants, nobody wants pine to burn. They take a pickup truck, a winch, a log turner, and a chain saw and drag large logs and puts them on a trailer – nobody else around here does that – they have to have Bobcats, log skidders, log loaders. The only reason the Forest Service allows him to take the timber is because he is low impact. He does not use heavy equipment. The Forest Service will give him commercial pole permits, when the Forest Service needs areas cleaned up sporadically, because they are low impact. All they are trying to do is pay utilities bills on her house and feed him.

Chairman McNeill stated his opinion that this probably does fall under the definition of agriculture or silviculture and that he is not an expert on either. He doesn't have the definitions to those to his satisfaction so he has a hard time voting in favor of the Town in this instance because the definition, in his mind, is vague.

Mr. Phelps agrees with Chairman McNeill. He was not satisfied with the definitions – there could be too many of them.

Mr. Sitarzewski stated that his opinion as the Code is written now it is not being followed. That doesn't mean he agrees or disagrees, he stated that Code is not being followed as it is written. There may be a need for the Code to be changed before the Planning and Zoning Commission.

Mr. McBride searched for the definition where the Landrin's operations would fall under silviculture and he could not find a direct relation that cutting is a specific part of silviculture. He wanted to find that relationship, but he could not find a connection or direct relationship.

Chairman McNeill asked for a motion.

Eagar Board of Adjustments
August 22, 2012

Wesley McBride moved to uphold Mr. Ray's, or the Town of Eagar's decision in the case of the Landrins. Joe Sitarzewski seconded, three were in favor, John O. Phelps and Winslow McNeill were opposed, motion carries 3-2.

ITEM #4: ADJOURNMENT

Melissa Webb moved to adjourn the meeting at 8:52 p.m. John Phelps seconded; all were in favor and the meeting adjourned.

Chairman